

NUNAKAUIAK YUPIK CORP.

IBLA 85-142

Decided June 25, 1985

Appeal from the decision of the Alaska State Office of the Bureau of Land Management partially rejecting Village Selection Applications F-14948-A and F-14948-A2.

Affirmed.

1. Alaska Native Claims Settlement Act: Native Land Selections:
Village Selections

Land occupied and actually used as a school by the Bureau of Indian Affairs, reduced to the smallest practicable tract, is not "public land" within the definition of Sec. 3(e) of ANCSA, and thus is not available for village selection even though it may be anticipated that the school will be "phased out" at some future time.

APPEARANCES: Peter R. Julius, Land Manager, Nelson Island, Toksook Bay, Alaska, for appellant; Rodger L. Hudson, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for BLM.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

By its decision dated October 24, 1984, the Alaska State Office of the Bureau of Land Management (BLM) rejected in part the selection application of the Nunakauiak Yupik Corporation (appellant). The BLM decision reads, in pertinent part, as follows:

On November 22, 1974, and December 12, 1975, Nunakauiak Yupik Corporation, for the Native village of Toksook Bay, filed selection applications F-14948-A and F-14948-A2, as amended, under the provisions of Secs. 12(a) and 12(b), respectively, of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, for the surface estate of certain lands:

U.S. Survey No. 5024, Block 4, Lot 1;

Containing 3.28 acres.

On December 2, 1983, the above-described lands were identified as a Federal installation and serialized as ANCSA Sec. 3(e) application AA-40708.

Sec. 3(e) of ANCSA states:

"Public lands" means all Federal lands and interests therein located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of a Federal installation

On August 8, 1984 the Bureau of Land Management made a determination that the smallest practicable tract actually used by the Bureau of Indian Affairs as of December 18, 1971 through December 18, 1974, is:

U.S. Survey No. 5024, Block 4, Lot 1;

Containing 3.28 acres

The land described above is not public land as defined in Sec. 3(e) of ANCSA; therefore, selection applications F-14948-A and F-14948-A2, respectively, must be and are hereby rejected as to the above-described land.

The record shows that the tract in question is the site of the Bureau of Indian Affairs (BIA) school of Toksook Bay. The site plan shows that it has extensive and substantial improvements including numerous buildings for classrooms, quarters, storage and related facilities, a large oil storage area, walks, pipelines, etc. It is apparent that these school facilities occupy most of the tract and that it would not be practical to reduce the area further.

Appellant's arguments are dual. First, it is asserted that because of cutbacks in Federal funding, BIA schools are gradually being phased out in Alaska, and if and when BIA no longer operates the school it will cease to be a Federal installation. Appellant says, "[w]e do not like the idea of giving up land to BIA knowing that they will not be here [a] month, a year or two years from now." Second, appellant contends that the BIA school must be regarded as a public school because "any resident of the community has a right to send his/her children to this school." Inferentially, appellant maintains that it is improper to determine that the site of a public school is not public land.

The answer filed on behalf of BLM indicates that the school is intended to be transferred to the State of Alaska no later than June 30, 1985. However, in making its determination that the site was not public land, BLM found it unnecessary to consider this aspect, stating, "Because this Sec. 3(e) determination will only concern the village selection period, December 18, 1971, through December 18, 1974, the future use of this site will not be addressed in this memorandum."

The Board agrees that prospective or planned future use is immaterial and irrelevant to the determination, which is controlled by the statute. Ukpeagvik Inupiat Corp., 81 IBLA 222 (1984). The record shows that the BIA first occupied this site in 1964 and has operated a school there ever since, adding a building and oil spill prevention dikes as recently as 1983. Thus, BIA has occupied the land as a Federal installation throughout the selection period, and still continues to do so.

The fact that the community regards the installation as a "public" school does not affect the determination of the status of the land. Section 3(e) of ANCSA excepts from the definition of "public land" land "actually used in connection with the administration of a Federal installation." The school is operated by BIA, a Federal agency, utilizing Federal employees, on Federal land improved by the expenditure of Federal funds. It is thus properly identified as a "Federal installation" within the meaning of sec. 3(e). 43 U.S.C. § 1602(e) (1982). Although appellant argues that "the real administration of these federal installations are within where regional administration resides in, such places as Bethel, Juneau, etc.; not in the villages where there are BIA schools," this Board cannot agree. The principal, teachers, and other staff who actually conduct and manage a school on a day-to-day basis must be regarded as being engaged in its "administration." The fact that there are other levels of administration elsewhere does not negate the fact that this school is on land "actually used in connection with the administration of a Federal installation," and therefore not available for selection as "public land" under ANCSA.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

